

### **REMARKS**

Claims 1 to 20 are pending in the application.

Reconsideration in view of the following remarks is respectfully requested.

Claims 1 to 20 were rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent Application Publication No. 2004/0093555) (hereinafter “the Therrien ‘555 reference”). The Therrien ‘555 reference relies on provisional application No. 60/409,684 (“the ‘684 provisional application”) for an earlier effective filing date for purposes of this Section 102(e) rejection.

Section 2136.03 III of the Manual of Patent Examining Procedure addresses using the filing date of a provisional application as the critical reference date of a U.S. application publication for purposes of 35 U.S.C. § 102(e). It states that for purposes of § 102(e), a publication is only entitled to rely on the filing date of the provisional “if the provisional application(s) properly supports the subject matter relied upon to make the rejection . . . .”

The subject matter relied upon to make the rejection (figure 4 and the detailed description beginning at paragraphs 33 ) is a screen shot of one embodiment of the system referred to in the Therrien ‘555 reference. The Final Office Action asserts that the ‘555 Therrien reference identically discloses the claim 1 features of “displaying a graphical user interface to a user, wherein the graphical user interface is a graphical representation of a data protection policy and a replication policy”, and “providing the user with an ability to modify the data protection policy and the replication policy through the graphical user interface”. In fact, these claim features do not appear anywhere (let alone, identically disclosed) in the provisional application.

The office action essentially asserts that the ‘684 provisional application identically discloses a protection Manager that maintains a protection policy and relies on the assertion that the protection policy is discussed in “greater detail” in the Therrien ‘555 reference. Subject matter contained in the asserted “greater detail” of the later application--but not contained in the ‘684 provisional application--cannot be used to anticipate Applicants’ claimed subject matter according to MPEP section 2136.03 III. Accordingly, claim 1 is allowable.

Claims 8 and 15 include features like those of claim 1, and are therefore allowable for essentially the same reasons as claim 1.

It is therefore respectfully requested that the anticipation rejections of claims 1, 8, and 15 be withdrawn, since the Therrien '555 reference is not entitled to the priority date of its provisional application, and therefore may not be used as prior art.

Claims 2 to 7, 9 to 14, and 16 to 20 depend directly from independent claims 1, 8, and 15, and are therefore allowable for at least the same reasons as claims 1, 8, and 15, respectively.

**CONCLUSION**

For at least all the above reasons, the Applicants respectfully submit that this application is in condition for allowance. It is therefore respectfully requested that the rejections be withdrawn, since claims 1 to 20 are allowable. It is also respectfully requested that the application be allowed and that it issue as early as possible.

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Respectfully submitted,

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